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In the Supreme Court of the United States

OCTOBER TERM, 1968

No. 9

BERNARD SHAPIRO, Welfare Commissioner of Connecticut,
Appellant,

vs.

VIVIAN THOMPSON,
Appellee.

On Appeal from the United States District Court for the District of Connecticut

Brief of the State of California as Amicus Curiae on Behalf of Appellant

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SUBJECT INDEX

	Page
Interest of the State of California	1
California Statutes Involved	3
Argument	4
I. Requiring of All Applicants for AFDC Benefits One Year's Residence in California Has a Reasonable Relationship to the Legislative Purpose of Giving Aid to All Eligible Needy Within the Limits of Available Public Resources and Within Budgetary Predictability and Thus Is Not a Denial of "Equal Protection of the Laws"	4
II. The Constitutionally Protected Right of Interstate Travel and Settlement in the State of One's Choice Does Not Encompass Subsidized Travel or Settlement	9
Conclusion	12

TABLE OF AUTHORITIES CITED

Cases	Pages
Aptheker v. Secretary of State, 378 U.S. 500 (1964)	9
Carrington v. Rash, 380 U.S. 89 (1965)	4
Dambroski v. Pfister, 380 U.S. 479 (1964)	10
Edwards v. California, 314 U.S. 160 (1941)	6, 9, 11, 12
Ferguson v. Skrupa, 372 U.S. 726 (1963)	7
Flemming v. Nestor, 363 U.S. 603 (1960)	6
Kent v. Dulles, 357 U.S. 116 (1958)	9
Madden v. Commonwealth of Ky., 309 U.S. 83 (1939)	8
Marshall v. California Department of Social Welfare, *et al.*, Civil Action No. 47401	2
McLaughlin v. Florida, 379 U.S. 184 (1964)	4
Sherbert v. Verner, 374 U.S. 398 (1962)	10, 12
Silver et al. v. Reagan, et al., 67 Adv. Cal. Rpts. 455	9
U.S. v. Guest, 383 U.S. 745 (1965)	9
Zemel v. Rusk, 381 U.S. 1 (1965)	9

Statutes	
California 1967 Budget Act, Sec. 32.5	6
California Welfare & Institutions Code:	
Sec. 11252	3, 6
Sec. 10000	3, 5
Sec. 10001	3, 5
Sec. 11004	4, 5
Conn. Gen. Stat. § 17-2d	4
49 Stat. 627 (1935) as amended, 42 U.S.C. § 602(b)(2) (1964)	11

UNITED STATES CONSTITUTION

	Pages
Fourteenth Amendment	1, 4
Art. I, Sec. 8, cl. 3	1, 11
Art. IV, Sec. 2	1

OTHER AUTHORITIES

Harvith, The Constitutionality of Residence Tests for General and Categorical Assistance Programs, 54 Calif. L. Rev. 567 (1966)	11
U.S. Bureau of the Census PC(2)-2B Mobility for States and State Economic Areas	9

In the Supreme Court of the United States

OCTOBER TERM, 1967

No. 813

BERNARD SHAPIRO, Welfare Commissioner of Connecticut,
Appellant,

vs.

VIVIAN THOMPSON,
Appellee.

On Appeal from the United States District Court for the District of Connecticut

Brief of the State of California as Amicus Curiae on Behalf of Appellant

INTEREST OF THE STATE OF CALIFORNIA

The constitutionality of California's durational residence requirement as a condition of eligibility for benefits under the Aid to Families with Dependent Children program has been challenged on the identical grounds as in the instant proceeding.[1]

1. Violation of the Privilege and Immunities Clause and the Equal Protection of the Laws Clause of the Fourteenth Amendment to the United States Constitution. Appellee herein also alleged violation of Art. IV, sec. 2 of the U.S. Const. In the California case the Plaintiffs have alleged violation of the Commerce Clause. (Art. I, sec. 8, cl. 3 of the U.S. Const.)

In course of litigation in the United States District Court for the Northern District of California is *Marshall v. California Department of Social Welfare, et al.*, Civil Action No. 47401 where a three-judge court has been convened.[2]

The State of California fully supports the position of the State of Connecticut asserting the right of a state to impose a residence requirement as a condition for the receipt of public assistance. However, we believe the Court should be apprised of certain important differences between the challenged statutes of the two states.

The Court below found invidious the classifications in the State of Connecticut's statute which grants welfare after three months residency in Connecticut to those who arrived with resources or ready employment but requires one year residency for those who come empty handed. It is imperative to note that California laws contain no such infirmities. Of utmost concern to the State of California and no doubt to all of the states is the Court's apparent conclusion that a statute which has for its purpose protection of the state's fiscal responsibility is per se an unconstitutional purpose. There is also involved the difference between the right to travel freely and a claimed right to be subsidized at the point of stoppage after exercise of the right to travel. We comment on this below.

This argument will be confined to the California statutory plan for Aid to Families with Dependent Children (hereinafter referred to as AFDC) in relation to the decision of the court below.

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2. Defendants filed a Motion for Summary Judgment on October 4, 1967, based essentially on the arguments set forth in this brief, hearing set for January 26, 1968.

CALIFORNIA STATUTES INVOLVED

Welfare & Institutions Code, section 11252 provides:

"No child is eligible to receive aid unless he has residence in the state.

"For the purposes of this chapter, a child who meets any of the following qualifications has residence in the state:

(a) If he has been physically present in the state for one year immediately preceding the date of application.

(b) If his parent or parents have resided in the state for the period of one year immediately preceding the date of application.

(c) If the parent or other relative with whom the child is living has resided in the state for the period of one year immediately preceding the birth of the child and the child was born within one year immediately preceding the date of application.

(d) If he is born in the state."

Welfare & Institutions Code, section 10000 provides:

"The purpose of this division is to provide for protection, care, and assistance to the people of the state in need thereof, and to promote the welfare and happiness of all of the people of the state by providing appropriate aid and services to all of its needy and distressed. It is the legislative intent that aid shall be administered and services provided promptly and humanely, with due regard for the preservation of family life, and without discrimination on account of race, national origin or ancestry, religion, or political affiliation; and that aid shall be so administered and services so provided as to encourage self-respect, self-reliance, and the desire to be a good citizen, useful to society."

Welfare & Institutions Code, section 10001 provides in part:

"The purposes of the public social services for which state grants-in-aid are made to counties are:

(a) To provide on behalf of the general public, *and within the limits of public resources,* reasonable support and maintenance for needy and dependent families and persons. . . ." (Emphasis added)

Welfare & Institutions Code, section 11004 provides in part:

"The provisions of this code relative to public social services for which state grant-in-aid are made to the counties shall be administered fairly to the end that all persons *who are eligible* and apply for such public social services shall receive the assistance to which they are entitled promptly, *with due consideration for the needs of applicants and the safeguarding of public funds* . . . ." (Emphasis added)

ARGUMENT

I. Requiring of All Applicants for AFDC Benefits One Year's Residence in California Has a Reasonable Relationship to the Legislative Purpose of Giving Aid to All Eligible Needy Within the Limits of Available Public Resources and Within Budgetary Predictability and Thus Is Not a Denial of "Equal Protection of the Laws"

The test for ascertaining whether legislation meets the requirements of the equal protection clause of the Fourteenth Amendment to the United States Constitution is "whether the classifications drawn in a statute are reasonable in light of its purpose" *(Carrington v. Rash,* 380 U.S. 89, 93 (1965), quoting *McLaughlin v. Florida,* 379 U.S. 184, 191 (1964).)

Applying this test, the court below held the purpose of Connecticut's durational residence requirement[3] "to pro-

3. Conn. Gen. Stat. § 17-2d provides:
"When any person comes into this state without visible means of support for the immediate future and applies for Aid to Dependent Children under Chapter 301 or general assistance under Part I of Chapter 308 within one year from his arrival,

tect its fisc by discouraging entry of those who come needing relief" void,[4] and that, even if the purpose were valid, the classification based on wealth between those who enter with a cash stake and those who do not is not reasonable in the light of its purpose.[5]

California's statute does not make any distinction between those entrants who are indigent, those with a cash stake, or those with substantial employment prospects. In order to be eligible for AFDC in California every applicant, regardless of race, creed or substance must have one year's residence.

California has a thoroughly reasonable and constitutional basis for its durational residence requirement, it is not as is Connecticuts' to prevent in-migration of indigents. The avowed goal of California's Public Assistance Programs, namely to render assistance to needy and distressed residents of California (Welf. & Inst. Code sec. 10000), must be read with the legislative caveat "to provide on behalf of the general public, and within the limits of public resources, reasonable support and maintenance for needy and dependent family and persons." Welf. & Inst. Code, Sec. 10001(a). Section 11004 of that code provides for the receipt of assistance by all who are eligible "with due consideration for the needs of applicants and the safeguarding of public funds."

The burgeoning population of the State of California has created unprecedented and unpredictable demands on the public resources. Despite the budgeting for the fiscal year 1967-1968 of over $406,000,000 for the Public Assistance

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such person shall be eligible only for temporary aid or care until arrangements are made for his return, provided ineligibility for Aid to Dependent Children shall not continue beyond the maximum federal residence requirement."

4. Jurisdictional Statement, Appendix A, pp. 19, 21.

5. *Id.* p. 21.

Programs, not including health services,[6] the benefit levels of the programs are still below the minimum standards of health and decency.

There is no basis for attributing to the California Legislature an intent to exclude indigent persons from migrating to California or to discriminate unconstitutionally against new residents solely because it has a residence requirement. There is, on the contrary, a real and legitimate purpose, made explicit by the California Legislature, to plan and budget, on a yearly basis, in order to maintain and, if possible, to advance existing benefit levels. Such planning must be made within the limits of a more predictable number of recipients capable of being forecast on the basis of reliable statistics. It is the only realistic way to allocate that scarce resource, public funds. To responsible citizens this is clearly a matter of compelling state interest.

Edwards v. California, 314 U.S. 160 (1941) did not hold that the husbanding of public funds by a state was an unconstitutional objective. (*id.* p. 173) *Edwards* held that the means used by California, i.e., a state statute making it a *crime* to bring an indigent person into the state, thereby preventing or obstructing impoverished United States citizens free ingress into the state, was unconstitutional. The Court stated "Its [the statute's] express purpose and inevitable effect is to prohibit the transportation of indigent persons across the California border." (*id* p. 174) This is neither the express purpose nor the inevitable effect of California Welfare & Institutions Code section 11252.

In *Flemming v. Nestor*, 363 U.S. 603, 611 (1960) this Court in sustaining a cut-off provision of the Social Security Act observed,

> "It is not within our authority to determine whether the Congressional judgment expressed in that section

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6. 1967 Budget Act, sec. 32.5.

> is sound or equitable, or whether it comports well or ill with the purpose of the act . . . when we deal with a withholding of a non-contractual benefit under a social welfare program such as this, we must recognize that the due process clause can be thought to interpose a bar only if the statute manifests a patently arbitrary classification utterly lacking in rational justification."

The California durational residence requirement, concerning a non-contractual benefit clearly has a rational justification. A necessary part of the legislative function is to set limits to a program, define eligibility and draw boundaries. Certainly every welfare plan classifies in just such a manner. But

> "One who assails the classification in such a law has the burden of showing that it does not rest upon any reasonable basis, but is essentially arbitrary. *Lindsley v. Nat. Carbonic Gas*, 220 U.S. 61, 78-79 (1911)"

Of course durational residence requirements occasionally result in some hardships. This fact is always a consequence of drawing a line.

But

> "A classification having some reasonable basis does not offend against [the Equal Protection] clause merely because it is not made with mathematical nicety or because in practice it results in some inequality." (Ibid.)

That hardships occasionally may result from durational residence requirements does not make the requirements unconstitutional but is only relevant to the legislative wisdom in retaining them. As pointed out in *Ferguson v. Skrupa*, 372 U.S. 726, 729-730 (1963) it is the classic function of the legislature to decide on the wisdom of legislation. This Court declared that "Courts should not extend even express

prohibitions of the constitution beyond their obvious meaning by reading into them conceptions of public policy that the particular court may entertain". Particularly relevant is the further statement "We have returned to the original constitutional proposition that courts do not substitute their social and economical beliefs for the judgment of legislative bodies who are elected to pass laws". (*id.* p. 730) The appellee herein and the plaintiffs in the similar California case are quite clearly asking the courts to supplant what is purely a legislative determination with social opinions which they believe to be more enlightened.

This Court has not been unmindful of the burdens on state finances. In *Madden v. Commonwealth of Ky.*, 309 U.S. 83, 93 (1939) the Court held:

> "An interpretation of the privilege and immunity clause which restricts the power of the states to manage their own fiscal affairs is a matter of gravest concern to them. It is only the emphatic requirements of the constitution which properly may lead the federal courts to such a conclusion."

There is no requirement in the Constitution that mandates a state to afford relief to all or any of its needy residents regardless of the period of their residence. That this succor is socially desirable few would deny. That California has an obligation to supply unpolluted air and water, adequate schools, highways, hospitals, protective services to all of its citizens none would deny. But it does not follow that the non-discriminatory residence requirements of California law amount to an unreasonable classification within the meaning of the Equal Protection Clause.

II. The Constitutionally Protected Right of Interstate Travel and Settlement in the State of One's Choice Does Not Encompass Subsidized Travel or Settlement

It is contended that durational residence requirements infringe on the right to travel freely from state to state. The court below held that Connecticut's residence requirement unconstitutionally abridged that right because it has a "chilling effect" on the right to travel.[7]

California's statute has not been such an impediment as to prevent in-migration to California of 1,122,204 persons during the period 1955-1960.[8] California's population has increased by about 25 percent since the 1960 census.[9]

The court below correctly points out that the "right to travel" cases[10] decided prior to *U.S. v. Guest*, 383 U.S. 745 (1965) have been concerned with absolute proscriptions on movement."[11] But *Guest* does not, as the court below held, proscribe such fancied "chilling effects" on the constitutionally protected right to travel as to prohibit a state's denial of instant free room and board when the right to travel and take up residence in Connecticut or California has been fully exercised. This is particularly true when a state retains its durational residence requirement in order to budget its limited resources for equitable distribution among the myriad rightful demands of its citizens.

The charged conspiracy in *U.S. v. Guest*, 383 U.S. 745, 760 and the statute considered in *Edwards v. California*, 314 U.S. 160 (1941) intentionally and purposely discouraged

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7. Jurisdictional Statement, Appendix A, 19.

8. U.S. Bureau of the Census PC(2)-2B Mobility for States and State Economic Areas.

9. *Silver et al. v. Reagan, et al.*, 67 Adv. Cal. Rpts. 455, 460.

10. *Zemel v. Rusk*, 381 U.S. 1 (1965); *Aptheker v. Secretary of State*, 378 U.S. 500 (1964); *Kent v. Dulles*, 357 U.S. 116 (1958).

11. Jurisdictional Statement, Appendix A, 18.

interstate travel in the first instance of negro citizens and in the second the indigent. These cases are inapplicable to California's residence requirements.

Similarly the State of South Carolina's application of its Unemployment Compensation Act in *Sherbert v. Verner*, 374 U.S. 398-410 (1962) was held "to constrain a worker to abandon his religious convictions respecting the day of rest," and constituted a permanent infringement of a First Amendment freedom. California's durational residence requirement for AFDC eligibility does not constitute a proscription on movement or the exercise of any other constitutionally protected right. There is no conspiracy to "impede" anyone from entering and residing in California. There is no predominant or even subordinate intent to "oppress" anyone from exercising his right of interstate travel.

California's statutory plan for administration of its AFDC program, including its durational residence requirement, does not explicitly or implicitly have for its purpose discouragement of interstate travel by indigents. There is a complete lack of any authority or evidence for the conclusion that durational residence requirements have a "chilling effect" on the constitutionally protected right to free travel between the state and the concomitant right to establish residence where one pleases.[12]

The appellee Vivian Thompson and the plaintiffs in similar cases now in course of litigation in several states were not discouraged by durational residence requirements from entering and taking up residence in the states involved. These litigants are endeavoring to exact a money grant from the state in order to exercise their right to establish

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12. The chilling effect on the exercise of First Amendment rights by the Louisiana penal statutes scrutinized by the Court in *Dombroski v. Pfister*, 380 U.S. 479, 487 (1964), was grounded on the actual prosecutions initiated and threatened under those statutes.

residence where they please. None of the cases relied upon by the court below directly or indirectly hold that there is a constitutional right to be subsidized by the state of one's chosen residence.

Professor Harvith's assertion that "clearly, residence tests affect interstate movement"[13] is pure speculation. It is reached in one leap from the statement that this is so "if the potential migrant recognizes his situation and reacts sensibly."[14] No study is cited to sustain the thesis that durational residence requirements in fact constitute a significant deterrent to migration.

The statute involved in *Edwards v. California,* 314 U.S. 160 (1941), imposing criminal sanctions on those who transported indigent persons into California, did prevent and was enacted to prevent non-resident indigents from coming into the state. It constituted an actual limit on the right to travel freely between the states. *Edwards* did not hold that the state had an obligation to support immediately or at all, everyone entering the state who decided to stay. It was the attempt to prohibit directly the transportation of indigent non-residents into the state that was condemned by the *Edwards* court in holding the statute violated the commerce clause[15] (majority opinion) and the rights of national citizenship (concurring opinions).

We agree that every citizen of the United States has the right to travel freely from state to state (with certain exceptions not herein relevant). We disagree that there is a

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13. Harvith, The Constitutionality of Residence Tests for General and Categorical Assistance Programs, 54 Calif. L. Rev. 567, 580 (1966).

14. *Id.* p. 579.

15. The commerce clause (U.S. Const. art. I, section 8, cl. 3) is clearly inapplicable in view of the Congressional permission of a public assistance residence requirement up to one year (49 Stat. 627 (1935), as amended, 42 U.S.C. § 602(b)(2) (1964)).

constitutionally guaranteed right to be subsidized by either the state from which one wishes to depart or the state to which one wishes to migrate. It is absurd to so distort Mr. Justice Douglas' reference to free ingress and egress and the right to free movement in *Edwards v. California,* 314 U.S. at p. 181. Mr. Justice Douglas has firmly repudiated this notion by stating, "The fact that the government cannot exact from me a surrender of one iota of my religious scruples does not, of course, mean that I can demand of government a sum of money, the better to exercise them. For the Free Exercise Clause is written in terms of what the government cannot do to the individual, not in terms of what the individual can exact from the government." *Sherbert v. Verner,* 374 U.S. 398, 412 (1963) concurring opinion.[16]

CONCLUSION

It is submitted that for the foregoing reasons the constitutional questions presented by this appeal are substantial.

Dated: November 29, 1967

Respectfully submitted,

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16. In *Sweeney v. State Board of Public Assistance,* (D.C.P.A.) 36 F. Supp. 171, 174, affirmed 3 Cir. 119 F.2d 1023, cert. den. 314 U.S. 611, (the same term as *Edwards*) the court similarly disposed of a like argument.